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Via ECF

Honorable LeShann DeArcy Hall
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Rasulev v. Good Care Agency, Inc. No. 16 Civ. 1993-LDH-CLP

Dear Judge DeArcy Hall:

On behalf of Plaintiff and the proposed Class, I write to correct an inaccurate statement I made during yesterday's pre-motion conference regarding Defendant's anticipated motion to dismiss based on its latest Rule 68 offer of judgment. Your Honor asked whether any of the citations in Plaintiff's chart of the recent cases holding that Rule 68 offers cannot moot proposed class action claims were FLSA cases. I mistakenly referred the Court to *Maddox v. Bank of N.Y. Mellon Trust Co.*, which in fact is not an FLSA case.

Another case in Plaintiff's chart, however, makes clear that irrespective of whether a plaintiff's class claims are brought pursuant to Rule 23 or the FLSA, *Campbell-Ewald* "explicitly adopted Justice Kagan's analysis in *Genesis Healthcare Corporation v. Symczyk*, 133 S. Ct. 1523 (2013)," thus overturning the prior ruling in *Genesis. Brodsky v. Humanadental Ins. Co.*, No. 10 Civ. 3233 (JRB), 2016 WL 5476233, at *3-4 (N.D. Ill. Sept. 29, 2016) (alterations omitted). Indeed, in adopting Justice Kagan's *Genesis* analysis the *Campbell-Ewald* ruling rested on "basic principles of contract law," which apply to class cases regardless of whether they are brought under Rule 23 or the FLSA. 136 S. Ct. 663, 670 (2016). For this reason courts rejecting similar attempts to pick off a representative plaintiff post-*Campbell-Ewald* have not drawn the distinction between Rule 23 and the FLSA proffered yesterday by Defendant's counsel. See *O'Neal v. Am.'s Best Tire LLC*, No. 16 Civ. 56 (PHX) (DGC), 2016 WL 3087296, at *3 (D. Ariz. June 2, 2016) (relying on contract principles articulated in *Campbell-Ewald* to reject mootness argument in FLSA collective action; not distinguishing FLSA from Rule 23); *Tegtmeier v. PJ Iowa, L.C.*, No. 15 Civ. 110 (JEG), 2016 WL 3265711, at *10 (S.D. Iowa May 18, 2016) (same); *Evey v. Creative Door & Millwork, LLC*, No. 15 Civ. 441 (JES), 2016 WL 1321597, at *6 (M.D. Fla. Apr. 5, 2016) (same); *Solano v. Ali Baba Mediterranean Grill, Inc.*, No. 15 Civ. 555 (AJF), 2016 WL 808815, at *8 (N.D. Tex. Mar. 2, 2016) (same); *Payne v. River Rocks LLC*, No. 15 Civ. 1727 (ORL) (DAB), 2016 WL 492378, at *2-3 (M.D. Fla. Jan. 21, 2016) (same).

Thank you for the Court's consideration.

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Respectfully submitted,

/s/ J. Burkett McInturff
J. Burkett McInturff

cc: All Counsel of Record (*via ECF*)